



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,679	03/31/2004	Roy L. Hood	713629.167	8311

27128 7590 01/27/2005

BLACKWELL SANDERS PEPER MARTIN LLP
720 OLIVE STREET
SUITE 2400
ST. LOUIS, MO 63101

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,679

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2004.
- 2a) ☐ This action is **FINAL**: 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-46 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15 and 34-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/13/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's preliminary amendment filed on August 27, 2004 has been entered. Claims 1-5 and 7-15 have been amended. Claim 6 has been cancelled. New claims 34-46 have been added. Claims 1-5 and 7-46 are currently pending with claims 16-33 being withdrawn from consideration. Applicant has also submitted arguments in response to a Final Rejection to the Parent Application (09/634,381) dated July 29, 2003. These arguments are considered in this Office Action. The rejections using the Cejka et al. (U.S. Patent No. 6,106,922) and Rawlinson (U.S. Patent No. 4,329,196) references are withdrawn because claim 1 now recites limitations similar to those found in cancelled claim 6, which was not rejected using those references.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-5 and 7-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Art Unit: 1771

Claim 1 recites "the base section of the at least one projecting element includes a core and a wall." However, there is no basis in the specification for the base section of the projecting element having a wall. The term "wall" as used in the specification refers to the mold (page 7, line 2 and line 9). The specification does not indicate that the base section of the projecting element has a wall.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-5, 7-15, and 34-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the "polymeric article compris[es] a generally planar base section" in lines 1-2. Claim 1 then later recites "at least one projecting element with a base section and a terminal part" in lines 3-4. This is problematic because "base section" is being used to denote two different things, and it becomes unclear which "base section" is being referred to when more limitations are added. Using "base section" as a limitation for two different things is confusing and indefinite. For instance, claim 1 recites "the at least one projecting element extending from the first side of the base section for the planar base section wherein the base section of the at least one projecting element includes a core and a wall, wherein the core of the base section of the at least one projecting element ..." in lines 4-8. The repeated use of "base section" is confusing because it does not refer to the same thing each time. Also, claim 3 recites "wherein the base section contains a pigment that is different from the terminal part of

Art Unit: 1771

the at least one projecting element.” This is indefinite because it is unclear which base section is being referred to. Claim 34 uses similar language and is also indefinite for the same reasons.

Claim 1 recites “the at least one projecting element includes a core and a wall.” It is unclear what a wall of a projecting element is because there is no indication in the specification that the projecting element has a wall. Is the wall supposed to be the part that isn't the core?

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3, 5, 7, 8, 10-12, 15, 34-40, and 42-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Saltee (U.S. Patent No. 5,976,643).

Saltee discloses a base sheet material with a plurality of garnishes projecting therefrom (Figure 1). The garnishes meet the claimed projecting element limitations because the polymer of the terminal part would also be present in the core of the base section, which is made from a different polymer (see Figures 5-7). With regard to claims 3 and 11, the base sheet must contain at least one pigment that is different from

Art Unit: 1771

one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claim 5, the retaining ring is preferably Derlin (column 6, line 21), which is a thermoplastic acetal. With regard to claim 7, various colors are used to create a camouflaged appearance (column 5, lines 20-21). With regard to claim 8, the garnish is made from polyethylene (column 3, line 60). With regard to claim 10, the base sheet has holes (Figure 1). With regard to claim 12, the base material is also camouflaged (column 4, line 1). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

With regard to claims 34 and 35, the garnishes would comprise at least a first plurality of projecting elements and a second plurality of projecting elements because each set may be colored differently to effect a camouflaged pattern (column 5, lines 11-21). With regard to claims 36, 37, 43, and 44, the base sheet must contain at least one pigment that is different from one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claims 38 and 40, Sallee discloses the garnishes are made from polyethylene (column 3, line 60).

8. Claims 1, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et al. (U.S. Patent No. 4,866,808).

Zuiddam et al. disclose floor mat comprising a plurality of U-shaped plastic profiles (Abstract). The terminal parts that differ from the base section in Zuiddam et al. would be the bristles that come out of the center of the U-shaped projections (Figure 1). The bristles would comprise the claimed first polymer and the U-shaped projections would comprise the claimed second polymer. With regard to claim 9, a slip-resistant

Art Unit: 1771

sheet is provided (column 4, lines 20-24). With regard to claim 10, there are open surfaces (Figure 2). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee.

With regard to claims 2 and 4, Sallee does not disclose what color the retaining collar, which comprises the claimed wall of the projecting element, might be. Sallee does disclose that the material is multi-colored though (column 5, lines 11-21). It would have been obvious to a person having ordinary skill in the art to use two distinct pigments for the retaining collar and the tufts, since the tufts form a camouflaged pattern and making retaining rings with the exact same color for each tuft would create an unnecessary and great expense because the retaining rings are not disclosed as contributing to the camouflaged pattern.

11. Claims 9 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Nesbitt (U.S. Patent No. 5,549,938).

Sallee does not disclose the use of a slip resistant sheet. Nesbitt teaches that a camouflage material can be backed by a magnetic sheet, which allows the material to

Art Unit: 1771

be securely fastened to a vehicle without slipping (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to provide a slip resistant sheet to Sallee in order to allow the camouflage material to be fastened to a vehicle, as taught by Nesbitt.

12. Claims 13 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Rawlinson (U.S. Patent No. 4,329,196).

Sallee does not disclose what density the polyethylene material should be. Rawlinson teaches that grass-like material made from polyethylene should have a density between 0.90 and 0.93 (column 3, lines 8-10). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a polyethylene with a density between 0.915 and 0.92 in the garnish of Sallee, since such range is embraced by the art as being known and it has been held to be held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. Claims 14 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Sesselmann (U.S. Patent No. 5,790,987).

Sallee teaches the material may be used on a person (Abstract), but does not disclose the use of filler. Sesselmann teaches that alumina may be added to camouflage material to help reduce odor (column 2, lines 5-27). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include alumina in the material of Sallee in order to reduce odor, as taught by Sesselmann.

Response to Arguments

Art Unit: 1771

14. Applicant's arguments filed August 27, 2004 have been fully considered but they are not persuasive.

15. Applicant argues that Zuiddam et al. merely discloses a plurality of U-shaped channels of a first polymer with bristles of another polymer attached therein while the Applicant's invention requires the core and terminal part of at least one projecting element be a first polymer material and the wall of the at least one projecting element be a second polymer material. However, Zuiddam et al. still meet the claim limitations as cited because the bristles would comprise the terminal part of the projecting element and the core because the bristles extend down into the U-shaped polymer base. The U-shaped polymer base comprises Applicant's claimed wall. While the structure of Zuiddam et al. is different from that of Applicant's drawings, it is still within the scope of the rejected claims.

16. Applicant argues that the projecting elements of Zuiddam et al. are of one single polymer. However, the projecting elements of Zuiddam et al. comprise both the U-shaped channels and the bristles. So the projecting elements comprise two different polymers.

17. Applicant argues that the projecting elements of Zuiddam et al. do not have a core and a wall. However, the bristles comprise the core of the projecting element and the U-shaped channels comprise the wall. The bristles make up the core because the U-shaped channel surrounds them.

18. Applicant argues that the anticipatory device must be substantially the same as the anticipated device in structure, function, and result. However, a 102 rejection is

Art Unit: 1771

proper when each element of the claim is found in a single reference. Such is the case with Zuiddam et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

JRP

January 21, 2005



Ms. A. K. Singh

Primary Examiner

Tech Center 1700